

Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Elizabeth Warren

Congressional Oversight Panel Hearing on TARP and Other Assistance to AIG

May 26, 2010

Good morning. My name is Elizabeth Warren, and this is the 20th public hearing of the Congressional Oversight Panel for the Troubled Asset Relief Program. Before we begin, I would like to note the presence of our newest Panel member, Professor Kenneth Troske. We are grateful to have you join us and look forward to your insights.

I am here today as the chair of the Congressional Oversight Panel, but that is not my only job. I am also a law professor, and in that role I have taught bankruptcy law for more than 30 years.

Bankruptcy is an enormously complicated field with enough subtleties to fill thousands of pages, but the essentials could fit on the back of a napkin. In short, there are times when businesses fail, and when they do, someone has to pick up the pieces. When a company digs itself so deeply into debt that it cannot escape, our legal system provides a set of strict and simple rules to force the business to bear as much of the cost of its mistakes as possible and to minimize the impact on others.

Of these rules, two are paramount. First, the business's owners – its shareholders – lose everything. Second, the business's creditors – including its bondholders and counterparties – lose money, and depending on how deep the hole, they could lose a great deal.

The rules may seem harsh, but they are fundamental to the functioning of a free market. After all, the parties that gain the most when a business succeeds should also lose the most when a business fails.

I open today's hearing by listing the rules of bankruptcy because we are about to examine a bankruptcy that broke all the rules. In fact, the rescue of the American International Group was so extraordinary that it bypassed the entire legal process of bankruptcy. In saving AIG, the government invented a new process out of whole cloth, a parallel set of rules devised and executed for the benefit of only one company.

By the time the federal government intervened in late 2008, AIG was a poster child for the need for a well-functioning bankruptcy system. Its stock price had plummeted 79 percent in only two weeks. The sharp decline in mortgage-linked asset prices and the failure of Lehman Brothers

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had led to staggering collateral calls from AIG's counterparties, and AIG simply did not have enough cash on hand to keep its doors open.

The next steps would ordinarily have been straightforward. Under the rules that applied to everyone else in America, AIG's shareholders should have lost everything, and its creditors should have taken substantial losses. Yet even today AIG continues to trade on the New York Stock Exchange, and no creditor has lost a penny on its dealings with the company.

Put another way, under the rules that applied to everyone else in America, the costs of AIG's mistakes should have been borne by AIG and its partners. But under this new, *ad hoc* set of rules, the costs of AIG's mistakes were borne by the rest of us – the American taxpayers.

Let me be clear. I do not mean to suggest that a traditional bankruptcy would have been the best or most appropriate choice for AIG. The company was a corporate Frankenstein, a conglomeration of banking and insurance and investment interests that defied regulatory oversight and that would not have fit easily into the existing bankruptcy structure. Its complexity, its systemic significance, and the fragile state of the economy may all arguably have been reasons for unique treatment. But no matter the justification, the fact remains that AIG's rescue broke all the rules, and each rule that was broken poses a question that must be answered.

Today's hearing is an effort to find those answers, as well as to determine how taxpayer money was spent and how it might one day be repaid. This hearing is the culmination of months of preparatory work on the part of the Panel and our staff, and it will serve as the foundation for our forthcoming June oversight report. It falls under the Panel's statutory mandate to examine "the use by the Secretary of authority under" the TARP, as well as "the impact of purchases made under the Act on the financial markets and financial institutions."

We will begin by hearing testimony from officials who, during the crisis of 2008, made the fateful decisions that set the course for the government's future involvement in AIG. We will then hear about the aftermath of those choices and about AIG's prospects as a continuing operation today. We intend to ask tough and detailed questions, but I want to first express sincere gratitude to our witnesses for their willingness to share their knowledge and perspectives.

Before we proceed with the testimony, I would like to offer my colleagues on the Panel an opportunity to make their own opening remarks.